

REMARKS/ARGUMENTS

The enclosed amendments and remarks are in response to the Office Action mailed December 5, 2008, finally rejecting claims 16, 19-30 and 37-40. Also enclosed is a Request for Continued Examination to reopen prosecution. Entry and consideration of these amendments and remarks is respectfully requested.

Claims 16, 19-30 and 37-43 are currently pending in the application. Claims 16, 27 and 37 are the independent claims of the present application, each of which having been amended to include additional limitations as discussed during the interview with Examiner, discussed below. Specifically, claim 16 was amended to include a further description of the single source to include "an individual drug and an individual medical device," such that a single tracking code relates to a single source (i.e., single drug and a single medical device) as well as a further description of the step of the tracking code retrieving stored data from the storage device, the retrieved data including the preparation of the single source, administration of the drug from the single source, and disposal of the source. Claim 27 was amended to include the further description of a single source, which is an individual drug and a single medical device, being associated with a single tracking code, such that the tracking code is unique as to that particular single source. Claim 27 was also amended to include the additional description of the data being retrieved by the unique tracking code from the storage device, the data tracking the single source from preparation of the source to final disposal of the source. Finally, claim 37 was also amended to include a further description of the single source to include "an individual drug and an individual medical device," such that a single tracking code relates to a single source (i.e., single

drug and single medical device). Entry and consideration of these amendments is respectfully requested.

Applicant has also introduced claims 41-43 which depend from claims 16, 27 and 37, respectively. Each of claims 41-43 include the element of the unique tracking code containing no information other than the identification of the unique tracking code. As will be explained in more detail below, both references cited by Examiner disclose a barcode which includes information such as type of drug, quantity, etc. directly within the barcode. The present invention, as claimed in claims 16, 27 and 37, does not include this type of information on the single source, and thus includes only a unique tracking code. Claims 41-43 further describe this aspect of the claimed invention to provide further detail. No new matter has been added with these claims.

Examiner Interview

As an initial matter, Applicant would like to thank Examiner for participating in an in-person interview at the U.S. Patent & Trademark Office on January 22, 2009. In the interview, Applicant and Examiner discussed the Brook et al. reference in comparison to the claimed invention. Specifically, Applicant argued that Brook et al. do not disclose, 1) a "unique tracking code" associated with a single source, wherein the single source is an individual drug and medical device which contains the drug, and 2) the unique tracking code retrieving data from the storage device. The Examiner and Applicant agreed on claim amendments, included herein, which the Examiner said would be satisfactory pending a search.

Objections to the Claims

In the Office Action, the Examiner objected to claim 16 for containing the language, "to a said single source." Examiner is correct in believing this to be a typographical error. Applicant has amended the claim to now state, "to said

single source."

35 U.S.C. §102(e) Rejection

Claim 37 was rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,170,746 (Brook et al.). Brook et al. disclose an inventory system which tracks general quantities of various drugs as they pass from one storage facility to another. The Brook et al. system is intended to maintain records of known quantities of a drug at a specific location. The system works using two distinct systems. First, Brook et al. disclose a barcode reading system. A user of this system scans a barcode located on the shelf or on the drug containers, whereby the barcode contains information on the barcode itself including the identity of the drug, etc. The information is read on the barcode and is displayed such that the user can recognize it. Col. 8, lines 41-47. Second, Brook et al. disclose a host system in which various inventory information is stored. Col. 8, lines 27-41.

The user, or the portable system itself, compares the information from the first system with the information from the second system. As laid out in column 8, lines 27-65, a user first asks the host system to open an inventory list for a specific location (i.e., nurses' station, pharmacy, etc.). The host system contains a stored list of each drug located at the location, and the quantity of each drug are located there. Next, the user scans the barcode of one of the types of drugs. The barcode on each type of drug is generic as to that type of drug, and contains information as to the type of drug, etc. The information from the host system is then compared to the information from the barcode system. Inventory is then taken to ensure the quantity of a specific drug that is actually present at the location match the quantity of a specific drug inventory stored on the host system. It is important to recognize that at no time does the barcode retrieve data from the host system.

Instead, the barcode of Brook et al. includes all the information in the barcode itself. Brook et al. merely compares the data on the barcode with the data on the host system.

The claimed invention of claim 37 is distinguishable from Brook et al. for a number of reasons. First, the claimed invention includes a "unique tracking code," which is not disclosed in Brook et al. The unique tracking code is, in one example, "in the nature of a unique numeric field of 22 characters presented as a machine readable bar code." Paragraph [0028]. The Brook et al. barcode does not contain a tracking code of any type, and instead merely contains the actual information regarding the type of drug, etc. This is similar to the second reference cited by Examiner, U.S. Patent No. 5,651,775 (Walker et al.), which also contains the information of the drug directly on the barcode itself. Thus, Brooke et al. does not disclose a unique tracking code.

Second, Brook et al. do not disclose a "unique tracking code" which is associated with a "single source of a drug," wherein the single source includes "an individual drug and an individual medical device," as is claimed in claim 37. The unique tracking code of the present invention is specific to single drug housed in a single medical device, such as a syringe, cradle, or the like. Thus, each syringe containing a drug, has a unique code, even if the drug inside the syringe is the same drug as in other syringes - each individual drug and individual medical device has its own unique tracking code. Brook et al., on the other hand, include a barcode which does not have a tracking code, and further is generic as to the type of drug, etc. Thus, each individual drug in the Brook et al. system do not have unique information on the barcode. Instead, the barcode of Brook et al. contains only generic information such as NDC information. Brook et al., col. 8, lines 45-47.

Third, Brook et al. do not disclose a tracking code

which can retrieve "first, second, and third data" from the storage device. In the claimed invention, the tracking code is associated with first, second and third data which is located on the storage device. Thus, when the tracking code is scanned, the tracking code requests the storage device (i.e., a network server, network hard drive, etc.) to send the information relating to the tracking code back to the user interface. Paragraph [0009], [0034]. As a result, the tracking code, which is the only information on the single source itself, retrieves the information relating to the tracking code from the storage device since the information is not found on the single source itself.

Brook et al., on the other hand do not disclose a unique tracking code, and moreover do not disclose a tracking code capable of retrieving information from a storage device. For argument's sake, let us consider Brook et al. as if it had a tracking code. In Brook et al., when the barcode is scanned, the information relating to the barcode is actually in the barcode itself, such that the information is merely read off of the barcode and displayed on the user interface. The barcode of Brook et al. does not retrieve any information from the host system, but instead contains the information directly in the barcode itself. The Brook et al. inventory system works by comparing the information from the barcode with the information saved on the host system, which is seen on the user interface at the user's request (typically through a keyboard entry). Col. 8, lines 52-55.

Therefore, Brook et al. do not disclose each and every element of the claimed invention as required under 35 U.S.C §102(e). Applicant respectfully requests that this rejection be withdrawn.

35 U.S.C. §103(a) Rejection

Claims 16, 19-30 and 38-40 were rejected under 35

U.S.C. §103(a) as being unpatentable over Walker et al. in view of Brook et al. Walker et al., similar to Brook et al., disclose a barcode system which includes the information relating to the drug directly in the barcode itself. By the Examiner's admission, Walker et al. do not include a unique tracking code. Examiner cites to Brook et al. for a unique tracking code. Moreover, Examiner admits that Walker et al. do not disclose a storage device, or a tracking code capable of retrieving information from the storage device. Examiner again cited to Brook et al. for these elements. Office Action, at 5-6.

Applicant respectfully submits that, as with claim 37, discussed above, each and every element of independent claims 16 and 27 is not disclosed in Walker et al., Brook et al., or any combination of the two references.

As in the arguments regarding claim 37, above, the combination of Walker et al. and Brook et al. do not disclose 1) a unique tracking code, 2) a unique tracking code related to a single, individual source, and 3) a unique tracking code capable of retrieving data from a storage device.

Walker et al. discloses a barcode that contains information relating to a drug directly in the barcode itself. Col. 6, lines 25-37. Similarly, Brook et al. disclose a barcode containing information relating to the drug directly in the barcode itself. Col. 5, lines 51-54. Neither reference discloses a unique tracking code as is claimed in the application. The unique tracking code is a code which identifies a specific, individual, drug and medical device and can relate the individual drug and medical device with information on a storage device. The two cited references merely disclose a barcode which contains the information regarding a drug on the barcode itself, and does not include a tracking code, particularly one that can be used to retrieve

data from an external storage device.

Moreover, by Examiner's own admission, Walker et al. do not disclose a storage device, nor a tracking code capable of retrieving data from the storage device. Office Action, at 6. Examiner looks to Brook et al. for these elements. However, as discussed above, Brook et al. is not capable of using a barcode scanner to retrieve information from the host system. Instead, the user of the system must manually retrieve information from the host system using a keyboard or the like, and the information retrieved is limited to the inventory of a specific location, such as a nurses' station. Brook et al., col. 6, line 66 to col. 7, line 8. Brook et al. then must compare the information retrieved manually from the host system to that read from the barcode on the drug. Col. 8, lines 53-55. Therefore, as discussed above, Brook et al. is not capable of retrieving information from the host system by scanning the barcode of a drug. Applicant respectfully asserts this element is missing from Brook et al. because the barcode of Brook et al. is not intended to be used to retrieve information, but rather the barcode of Brook et al. is used merely to store information in the barcode itself, and thus there would be no need for the barcode to retrieve information from a storage device. Walker et al., of course, cannot satisfy this missing element either.

For these reasons, it is respectfully submitted that the combination of Walker et al. and Brook et al. do not disclose each and every element of the claimed invention, as required by 35 U.S.C. §103(a). Applicant respectfully requests this rejection be removed.

In view of the above, and in light of the discussions during the interview with Examiner, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of

the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 4, 2009

Respectfully submitted,

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